



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 4286-99
8 May 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that on 12 February 1997, you accepted the findings of the Physical Evaluation Board (PEB) that you were unfit for duty because of right L5 radiculopathy, surgically treated with L4-5 discectomy and foraminotomy, rated at 20% under Department of Veterans Affairs (VA) code 5293, as moderate intervertebral disc syndrome. You were discharged with entitlement to disability severance pay on 15 April 1997. Following your discharge, the VA rated your condition at 40% under VA code 5293, as severe intervertebral disc syndrome, based on your complaint of constant low back pain with radicular symptoms.

The Board was not persuaded that you were entitled to a rating in excess of 20% under VA code 5293 at the time of your discharge. In this regard, it noted that the VA apparently assigned the next higher rating of 40% based largely on your subjective complaints. In the Board's opinion, the available records do not objectively demonstrate that you suffered from severe intervertebral disc syndrome prior to your discharge. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director